



# PUBLIC NOTICE

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## AUCTION OF 700 MHz BAND LICENSES SCHEDULED FOR JANUARY 24, 2008

### Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76

AU Docket No. 07-157

Report No. AUC-07-73-B (Auctions 73 and 76)

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## I. GENERAL INFORMATION

### A. Introduction

1. By this Public Notice, we announce the procedures and minimum opening bid amounts for the upcoming auction of licenses for services in the 698-806 MHz band (herein, the “700 MHz Band”) scheduled to begin on January 24, 2008.<sup>1</sup> This auction is designated as Auction 73. Auction 73 will offer

<sup>1</sup> The 698-806 MHz band, which currently is occupied by television broadcasters, is being made available for new commercial and public safety services as a result of the digital television (DTV) transition. In prior proceedings, the Commission considered the 700 MHz Band in two parts, 698-746 MHz (the “Lower 700 MHz Band”) and 746-806 MHz (the “Upper 700 MHz Band”). The Lower 700 MHz Band was divided into blocks A through E, and the Upper 700 MHz Band was divided into blocks A through D. The Commission previously assigned licenses for blocks C and D in the Lower 700 MHz Band and for blocks A and B in the Upper 700 MHz Band. Consequently, the remaining blocks to be licensed are the Lower 700 MHz Band A, B, and E Blocks, and the Upper 700 MHz (continued....)

700 MHz Band licenses for initial bidding. As explained in this Public Notice, 700 MHz Band licenses may be offered in contingent subsequent bidding. In the event that any licenses are offered in contingent subsequent bidding, that event will be designated as Auction 76. On August 17, 2007, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,<sup>2</sup> the Wireless Telecommunications Bureau (“Bureau”) released a public notice seeking comment on competitive bidding procedures for both the initial bidding and the contingent subsequent bidding for 700 MHz Band licenses.<sup>3</sup> Interested parties submitted 12 comments and 8 reply comments in response to the *700 MHz Auction Public Notice* as well as a number of *ex parte* communications.<sup>4</sup>

2. In the *700 MHz Auction Public Notice*, the Bureau proposed to include all available, commercial 700 MHz Band licenses (1,099 licenses) for initial bidding in Auction 73 using the Commission’s standard simultaneous multiple-round (“SMR”) auction format for the A, B, D, and E block licenses and an auction design with hierarchical package bidding (“HPB”) for the C Block licenses.<sup>5</sup> The *700 MHz Auction Public Notice* also proposed procedures for the contingent subsequent bidding, now designated Auction 76, on licenses for spectrum associated with any initially offered licenses for which the Auction 73 results do not satisfy applicable reserve prices. Based on the record and after considering comments provided in response to the *700 MHz Auction Public Notice*, we hereby announce the final procedures for Auction 73 and Auction 76.

3. This Public Notice, provides, among other things, procedures for the following:

- anonymous bidding, to enhance competition by safeguarding against potential anti-competitive auction strategies;
- package bidding, to enable bidders trying to combine multiple C Block licenses to place bids on packages of those licenses;
- block-specific aggregate reserve prices, to help assure that the public recovers a portion of the value of the spectrum resource; and
- prompt subsequent bidding in Auction 76, to offer licenses for relevant block(s) in the event Auction 73 results do not satisfy applicable reserve prices.

4. *Anonymous Bidding.* In the *700 MHz Second Report and Order*, the Commission found that the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or “limited information”) bidding procedures, regardless of any pre-auction measurement of

(Continued from previous page)

Band C and D Blocks. As the letters identifying the blocks remaining to be licensed in the Lower and Upper 700 MHz Bands do not overlap, we will refer to these blocks to be licensed as the A, B, E, C and D Blocks, without repeating the Lower 700 MHz Band and Upper 700 MHz Band designation.

<sup>2</sup> 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); *see also* 47 U.S.C. § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid); 47 C.F.R. § 1.2104(c) and (d).

<sup>3</sup> “Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73,” *Public Notice*, FCC Rcd 15004 (2007) (“*700 MHz Auction Public Notice*”).

<sup>4</sup> A listing of parties that filed comments, reply comments and *ex parte* or may be found in Attachment C. Parties will be identified in this Public Notice by their abbreviated name as indicated in Attachment C.

<sup>5</sup> *700 MHz Auction Public Notice* at ¶¶ 17-24. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses and on certain pre-defined packages of specified licenses. A bidder may bid on, and potentially win, any number of licenses and/or packages. Bidding generally remains open on all licenses until bidding stops on every license, based on the applicable stopping rule.

likely auction competition.<sup>6</sup> Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. Having proposed and sought comment on more detailed procedures for employing anonymous bidding for the upcoming auction, we now announce, in this Public Notice, detailed anonymous bidding procedures.

5. *Package Bidding for C Block Licenses.* The Commission also determined in the *700 MHz Second Report and Order* that providing for package bidding for C Block licenses would serve the public interest.<sup>7</sup> The Commission found that package bidding for these licenses should facilitate the entry of entities seeking to create a nationwide footprint and whose business plans require the economies of scale that only can be obtained with nationwide operation.<sup>8</sup> At Commission direction, the Bureau previously proposed and sought comment on detailed procedures for implementing package bidding for the C Block licenses and not for licenses in the other blocks to be auctioned.<sup>9</sup> In this Public Notice, we detail the process for package bidding for the C Block licenses.

6. *Block-Specific Aggregate Reserve Prices.* The Commission also decided to provide for aggregate reserve prices for licenses authorizing the use of each block of the commercial 700 MHz Band yet to be licensed.<sup>10</sup> The Commission concluded that, consistent with its statutory mandate, disclosed reserve prices would promote the recovery of a portion of the value of the public spectrum resource.<sup>11</sup> The Commission directed the Bureau to adopt aggregate reserve prices reflecting the potential market value of this spectrum based on a variety of factors including, but not limited to, the characteristics of this band and the auction prices of other recently auctioned licenses, such as licenses for Advanced Wireless Services in the 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”).<sup>12</sup> Accordingly, the Bureau proposed and sought comment on the following block-specific aggregate reserve prices: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion. Further, the Bureau proposed that if the sum of the provisionally winning bids for the licenses in a block does not satisfy the relevant aggregate reserve price, none of the relevant licenses for the particular block will be assigned based on the auction results. In this Public Notice, we adopt this proposal.

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<sup>6</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, FCC 07-132, ¶¶ 274-284 (2007) (“*700 MHz Second Report and Order*”), recon. pending.

<sup>7</sup> *700 MHz Second Report and Order* at ¶¶ 287-292.

<sup>8</sup> *Id.* at ¶¶ 291-292.

<sup>9</sup> In the event that unforeseen difficulties make it impracticable to implement package bidding for the C Block consistent with the goals the Commission articulated in the *700 MHz Second Report and Order*, the Commission provided that the Bureau could conduct the auction without package bidding for the C Block.

<sup>10</sup> *700 MHz Second Report and Order* at ¶¶ 297-317.

<sup>11</sup> *Id.* at ¶ 304.

<sup>12</sup> *Id.* The Commission’s website provides extensive information regarding the recent auction of AWS-1 licenses (“AWS-1 auction” or “Auction 66”). See <http://wireless.fcc.gov/auctions/66/>.

7. *Auction 76 Overview.* The Commission decided that, if licenses initially offered for the A, B, C, or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) for those licenses, the Commission promptly will offer alternative licenses for those blocks.<sup>13</sup> More specifically, the Commission will offer licenses for the A, B, and E Blocks subject to alternative performance requirements. With respect to the C Block, the Commission will offer alternative licenses without the open platform conditions and based on different geographic areas and spectrum bandwidth. If the D Block license is not assigned because the auction results do not satisfy the D Block reserve price, the Commission may re-offer that license subject to the same rules or reconsider the applicable rules. For administrative purposes, we will designate as Auction 76 any subsequent bidding for alternative licenses for the A, B, C or E Blocks or for the D Block license that occurs because Auction 73 results for licenses initially offered for the relevant blocks do not satisfy the applicable aggregate reserve price(s). In this Public Notice, we announce detailed procedures for conducting Auction 76, if necessary.

8. The Commission will conduct bidding in Auction 73 and any contingent subsequent bidding in Auction 76 for 700 MHz Band licenses as a single auction to the extent possible, given the strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum and the related nature of the licenses being offered in Auctions 73 and 76. Thus, pursuant to the *700 MHz Second Report and Order*, we will permit only qualified bidders in the initial auction to participate in the contingent subsequent auction. To enable a prompt start to Auction 76 after Auction 73, applicants must select any licenses on which they may bid in Auction 76 by the deadline for filing their Auction 73 application. Applicants must select those licenses by submitting a separate abbreviated short-form application to participate in Auction 76. The abbreviated Auction 76 application must be filed together with the applicant's standard application for Auction 73, following procedures described in this Public Notice. In the event that Auction 76 takes place, bidder identity and other information on the applicant's completed Auction 73 short-form application will be combined with the licenses selected in the abbreviated Auction 76 application to create the applicant's Auction 76 application. This process will minimize the time period between auctions by eliminating any need for applicants to take time following Auction 73 to file new applications or select additional licenses, and for the Commission to review newly-filed short-form applications. Applicants in Auction 76, however, will have an opportunity after Auction 73 to obtain additional eligibility for any licenses offered in Auction 76 by supplementing their upfront monies on deposit with the Commission pursuant to the procedures described herein, as provided for in the *700 MHz Second Report and Order*.

9. We also will use the Auction 73 design in Auction 76, including an aggregate reserve price for each block that matches the applicable initial reserve price. In the event that alternative licenses for the C Block are offered for Blocks C1 and C2, we will conduct package bidding for the C2 Block only, using the pre-determined packages described in this Public Notice. Alternative licenses for Blocks C1 and C2 will be subject to reserve prices. There will be a joint aggregate reserve price equal to the initial auction C Block aggregate reserve price, and separate aggregate reserve prices for the C1 and C2 Blocks that add to the joint aggregate reserve price. Licenses in both blocks will be assigned if the joint aggregate reserve price is met. If the joint aggregate reserve price is not met but one of the block-specific reserve prices is met, licenses in the block for which the reserve price is met will be assigned. Licenses in the other block will not be assigned. This will assure the aggregate reserve price in the initial auction continues to apply while maximizing the opportunity for licenses for either Block C1 or C2 to be assigned.

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<sup>13</sup> *700 MHz Second Report and Order* at ¶¶ 306-308.

## 1. Background of Proceeding

10. The Commission is offering the licenses in Auction 73 consistent with the requirements of the Digital Television Transition and Public Safety Act of 2005 ("DTV Act").<sup>14</sup> Pursuant to the DTV Act the Commission must conduct the auction of licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008.<sup>15</sup> A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52-53, 56-58, 60-62, and 65-67) and adjacent channels.<sup>16</sup>

## 2. Licenses to be Offered in Auction 73

11. Auction 73 will offer a total of 1,099 licenses: 176 Economic Area (EA) licenses in each of the A and E Blocks, 734 Cellular Market Area (CMA)<sup>17</sup> licenses in the B Block, 12 Regional Economic Area Grouping (REAG) licenses in the C Block, and one nationwide license, to be used as part of the 700 MHz Public/Private Partnership, in the D Block.

12. The following table describes the 700 MHz Band licenses that will be offered in Auction 73:

Block	Frequencies (MHz)	Bandwidth	Pairing	Geographic Area Type	No. of Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	EA	176
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	734
E	722-728	6 MHz	unpaired	EA	176
C	746-757, 776-787	22 MHz	2 x 11 MHz	REAG	12
D	758-763, 788-793	10 MHz	2 x 5 MHz	Nationwide	1*

\*Subject to conditions respecting a public/private partnership license.

<sup>14</sup> See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA"). Title III of the DRA is the DTV Act. The DTV Act is codified in various portions of Title 47 of the United States Code.

<sup>15</sup> 47 U.S.C. § 309(j)(15)(v).

<sup>16</sup> The 700 MHz *Second Report and Order* is part of the 700 MHz band proceeding. See also, e.g., Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 9345 (2006), *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007), *Order on Reconsideration*, FCC 07-171 (2007).

<sup>17</sup> The CMA licenses consist of both Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) licenses. For the Lower 700 MHz Band, the Commission adopted MSAs and RSAs as defined by Public Notice Report No. CL-92-40 "Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties," January 24, 1992, DA 92-109, 7 FCC Rcd 742 (1992), with the following modifications: (i) the service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline; and (ii) the service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf. 47 C.F.R. § 27.6(c)(2).

## B. Rules and Disclaimers

### 1. Relevant Authority

13. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, Part 1, of the Code of Federal Regulations, including recent amendments and clarifications;<sup>18</sup> rules relating to the 700 MHz Band contained in Title 47, Part 27, of the Code of Federal Regulations; rules relating to the public/private partnership applicable to the D Block contained in Title 47, Part 90, of the Code of Federal Regulations; and rules relating to applications, environment, practice and procedure contained in Title 47, Part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in this Public Notice and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>19</sup> For example, among other Commission orders, prospective bidders should be familiar with the *700 MHz First Report and Order* and the *700 MHz Second Report and Order*.<sup>20</sup>

14. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auctions 73 and 76. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating

<sup>18</sup> 47 C.F.R. Part 1, Subpart Q. Prospective applicants are also encouraged to review the Commission's decisions that establish competitive bidding rules and policies, including policies governing benefits extended to designated entities (i.e., small businesses, rural telephone companies, and businesses owned by women and minorities). See, e.g., Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891 (2006) ("*CSEA/Part 1 Report and Order*"), recons. pending; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 21 FCC Rcd 4753 (2006) ("*Designated Entity Second Report and Order and Designated Entity Second FNPRM*"), recons. pending; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd 6703 (2006).

<sup>19</sup> See, e.g., Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Second Report and Order*, 9 FCC Rcd 2348 (1994) (*Competitive Bidding Second Report and Order*); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) ("*Part 1 Fifth Report and Order*"); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) ("*Part 1 Seventh Report and Order*") (amending the anti-collusion rule, which is codified at 47 C.F.R. §1.2105(c)); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002) (amending Section 1.2110 of the Commission's rules); *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd 1942 (2005) ("*Second Order on Reconsideration of the Fifth Report and Order*") (further amending Section 1.2110 to exempt the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant and adopting other modifications to the competitive bidding rules); *CSEA/Part 1 Report and Order*.

<sup>20</sup> See n.6 & 16.



contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpweb.com>.<sup>21</sup>

## 2. Prohibition of Collusion; Compliance with Antitrust Laws

15. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).<sup>22</sup>

### a. Entities Subject to Anti-Collusion Rule

16. The anti-collusion rule will apply to any applicants that submit short-form applications for Auctions 73 or 76 and select licenses in the same or overlapping CMAs, EAs, REAGs or the nationwide license in the D Block. For example, assume that one applicant applies for a REAG license and a second applicant applies for an EA license covering any area within that REAG. The two entities will have applied for licenses covering the same geographic areas and would be precluded from communicating with each other under the rule. The rule also applies where one applicant has selected a license in Auction 73 and another applicant selects a license in Auction 76 that covers any of the same geographic area. In addition, the rule precludes applicants that apply to bid for the nationwide license in the D Block, or all the licenses in any other block, from communicating with all other applicants. Thus, applicants that have applied for licenses covering the same markets (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.<sup>23</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>24</sup> (As described in Section IV.A.2., below, information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same geographic areas as the licenses that it has selected in its short-form application.<sup>25</sup>)

17. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and

<sup>21</sup> When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 07-3415 for the *700 MHz Auction Public Notice*, or DA 07-4171 for this Public Notice).

<sup>22</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). See also *Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

<sup>23</sup> See, e.g., "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders," *Public Notice*, DA 96-1460 (rel. August 28, 1996).

<sup>24</sup> See, e.g., *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n.19 (EB 2004), application for review pending (collusion rule applies to applicants regardless of whether they are qualified to bid); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>25</sup> Section IV.A.2. "Information Available to Bidders Before and During the Auctions," below, especially ¶ 154.

any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.<sup>26</sup>

18. Entities and parties subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. In situations where the anti-collusion rule views the same person as the applicant with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs.<sup>27</sup> The Bureau has not addressed situations where employees who do not qualify as the applicant, (e.g., are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to necessarily convey to the applicant. We note that the exception to the anti-collusion rule providing that non-controlling interest holders may have interests in more than one competing bidder without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.<sup>28</sup>

**b. Prohibition Applies Until Down Payment Deadline**

19. Section 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.<sup>29</sup> In recognition of the related nature of the initial auction and any contingent auction of alternative licenses, the Commission concluded in the *700 MHz Second Report and Order* that the provisions of the anti-collusion rule would continue to apply until the down payment deadline for the subsequent auction.<sup>30</sup>

20. Some commenters argue that we should allow applicants to "opt-out" from the anti-collusion prohibition in the event Auction 76 is conducted.<sup>31</sup> Under MetroPCS's proposal, an applicant that has no intention to bid in the subsequent auction could inform the Commission of its intent in writing with a certification that its decision is not based on any discussion with other competing bidders of auction strategy or post-auction market structure.<sup>32</sup> As one commenter acknowledges, changing the application of the rule in this way is beyond the Bureau's delegated authority and beyond the scope of this non-rulemaking proceeding and would require action by the Commission to reconsider its determination in the *700 MHz Second Report and Order*.<sup>33</sup> Thus, we are unable to adopt the proposed opt-out certification procedure. If it is necessary to conduct Auction 76, the provisions of the anti-collusion rule will apply to

<sup>26</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>27</sup> Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, DA 06-157, 21 FCC Rcd 523 (Auc. Div. 2006); Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, DA 06-156, 21 FCC Rcd 520 (Auc. Div. 2006); Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

<sup>28</sup> 47 C.F.R. § 1.2105(c)(4).

<sup>29</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>30</sup> *700 MHz Second Report and Order* at ¶ 316 ("[T]he applicable 'down payment deadline' for purposes of our anti-collusion rule shall be the 'down payment deadline' established for the subsequent auction.").

<sup>31</sup> MetroPCS Comments at 24; US Cellular Reply Comments at 8-9; Leap Reply Comments at 4-5.

<sup>32</sup> MetroPCS Comments at 24.

<sup>33</sup> *Id.*

all applicants until the down payment deadline, which will occur after the close of bidding on licenses offered in Auction 76.

**c. Prohibited Communications**

21. Prospective applicants for upcoming Auctions 73 and 76 and other parties that may be engaged in discussion with such prospective applicants are cautioned of the need to comply with the Commission's anti-collusion rule, Section 1.2105(c).<sup>34</sup> The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy.<sup>35</sup> While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

22. The Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."<sup>36</sup>

23. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential in both Auctions 73 and 76 at the time of disclosure may violate the anti-collusion rule.<sup>37</sup> This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auctions 73 and 76, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation.<sup>38</sup> Similarly, an applicant's public statement of intent not to participate in Auction 76 bidding could also violate the rule.

24. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy.<sup>39</sup> Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or engineering firm or

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<sup>34</sup> 47 C.F.R. § 1.2105(c).

<sup>35</sup> See *Western PCS BTA 1 Corp.*, 14 FCC Rcd 21571 (1999).

<sup>36</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

<sup>37</sup> Thus, communication by an applicant to another applicant for one or more of the same licenses of the applicant's license selections on its short-form application, or of the fact that the applicant does or does not hold provisionally winning bids on particular licenses, may well violate the anti-collusion rule.

<sup>38</sup> Cf. Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341, 347-48 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

<sup>39</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

consulting firm), a violation similarly could occur.<sup>40</sup> In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>41</sup> A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.<sup>42</sup> Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"<sup>43</sup> and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."<sup>44</sup>

25. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures for limited information.<sup>45</sup> Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

**d. Disclosure of Bidding Agreements and Arrangements**

26. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application.<sup>46</sup> If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants for licenses covering any of the same or overlapping geographic areas after the short-form filing deadline.<sup>47</sup>

**e. Anti-Collusion Certification**

27. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachments D and E to this Public Notice, each applicant certifies its compliance

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<sup>40</sup> Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("Nevada Wireless Order").

<sup>41</sup> *Id.*

<sup>42</sup> See, e.g., *Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau*, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

<sup>43</sup> Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

<sup>44</sup> Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

<sup>45</sup> See Section IV.A.2. "Information Available to Bidders Before and During Auctions," below.

<sup>46</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>47</sup> Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995) ("Anti-Collusion Public Notice").

with Section 1.2105(c). However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>48</sup> The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”<sup>49</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>50</sup>

**f. Antitrust Laws**

28. Applicants are also reminded that, regardless of compliance with the Commission’s rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.<sup>51</sup> Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.<sup>52</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.<sup>53</sup> The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other.<sup>54</sup> Similarly, the Bureau has long reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.”<sup>55</sup> To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.<sup>56</sup> If an applicant is found to have violated the antitrust laws or the Commission’s rules in connection with its participation in the competitive bidding process, it may be

<sup>48</sup> *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

<sup>49</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

<sup>50</sup> 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>51</sup> Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21558, 21560 ¶ 4 and n.4 (1999) *citing* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission’s Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”). (“*Fourth Memorandum Opinion and Order*”).

<sup>52</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. *See also* “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

<sup>53</sup> The Commission has cited a number of examples of such anticompetitive behavior. *See, e.g.*, Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858 at 6869 n.134.

<sup>54</sup> Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n.134 (1994); *see also Anti-Collusion Public Notice*.

<sup>55</sup> *Anti-Collusion Public Notice*.

<sup>56</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.<sup>57</sup>

29. Frontline urges the Commission to “adopt an auction rule that states that a bidder cannot release any bidding information to the public during the course of the auction,” and provide notice that all parties remain subject to the antitrust laws.<sup>58</sup> As Verizon Wireless points out, however, the Commission has consistently provided such guidance in prior auctions.<sup>59</sup> We do so again here: All parties remain subject to the antitrust laws.

**g. Duty to Report Prohibited Communications**

30. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.<sup>60</sup> The Commission recently clarified that each applicant’s obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.<sup>61</sup>

31. Section 1.65 of the Commission’s rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>62</sup> Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii).

32. Applicants must be aware that failure to comply with the Commission’s rules can result in enforcement action.

**h. Winning Bidders Must Disclose Terms of Agreements**

33. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.<sup>63</sup>

**i. Additional Information Concerning Anti-Collusion Rule**

34. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment I. These documents are available on the Commission’s auction anti-collusion web page.<sup>64</sup>

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<sup>57</sup> 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

<sup>58</sup> Frontline Comments at 9-10.

<sup>59</sup> Verizon Wireless Reply Comments at 2-3.

<sup>60</sup> 47 C.F.R. § 1.2105(c)(6).

<sup>61</sup> See *700 MHz Second Report and Order* at ¶¶ 285-86.

<sup>62</sup> 47 C.F.R. § 1.65.

<sup>63</sup> 47 C.F.R. § 1.2107(d).

<sup>64</sup> <http://wireless.fcc.gov/auctions/anticollusion>

### 3. Protection of Incumbent Operations

35. A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52-53, 56-58, 60-62, and 65-67) and adjacent channels. In accordance with the Commission's rules, 700 MHz Band licensees must protect analog and digital TV incumbents from harmful interference through February 17, 2009, the end of the DTV transition period.<sup>65</sup> After February 17, 2009, 700 MHz licensees must continue to operate in accordance with the Commission's rules to reduce the potential for interference to public reception of the signals of DTV broadcast stations transmitting on DTV Channel 51.<sup>66</sup> These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to some parts of their geographic license areas.

36. In the *700 MHz Second Report and Order*, the Commission grandfathered an incumbent guard band B Block licensee in Major Economic Areas (MEAs) 21 and 39 at 761-763 MHz and 791-793 MHz of the D Block. The new D Block licensee will be authorized on a secondary basis at 761-763 MHz and 791-793 MHz in these markets, and it may not cause interference to the primary operations of the grandfathered licensee. If the grandfathered licensee, or a successor or assignee, cancels either of the grandfathered licenses, or if either license cancels automatically, is terminated by the Commission, or expires, then the licensed geographic area will revert to the D Block licensee automatically.

#### a. International Coordination

37. Potential bidders seeking licenses for geographic areas that are near the Canadian or Mexican borders are subject to international agreements with Canada and Mexico. Pursuant to these agreements, the U.S. must protect the signals of Canadian and Mexican television broadcast stations located in the border area.<sup>67</sup> Unless otherwise modified by international treaty, licensees must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada. Further, until such time as existing agreements are replaced or modified to reflect the new uses, licensees in the band will be subject to existing agreements.

#### b. Quiet Zones

38. 700 MHz Band licensees must protect the radio quiet zones set forth in the Commission's rules.<sup>68</sup> Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission's rules.<sup>69</sup>

### 4. Due Diligence

39. We caution potential applicants formulating their bidding strategies to investigate and consider the extent to which 700 MHz Band frequencies are occupied. Applicants and their investors should also understand that Commission rules and requirements place limitations on the ability of 700 MHz Band licensees to use this spectrum. As stated above, there are a number of incumbent broadcast television licensees already licensed and operating in the band that will be subject to the upcoming auction. Geographic area licensees operating on the spectrum associated with Channels 52-53, 56-58, 60-62, and 65-67 must comply with the co-channel and the adjacent channel provision of Section 27.60 of

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<sup>65</sup> See 47 C.F.R. § 27.60 (co-channel and adjacent channel interference protection requirements for analog TV and DTV facilities).

<sup>66</sup> See 47 C.F.R. § 27.60.

<sup>67</sup> See 47 C.F.R. § 27.57(b). Agreements with Canada and Mexico at <http://www.fcc.gov/ib/sand/agree/welcome.html>

<sup>68</sup> 47 C.F.R. § 1.924.

<sup>69</sup> *Id.*

the Commission's rules.<sup>70</sup> These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. For example, bidders should become familiar with any petitions or other pleadings filed in response to the *700 MHz First Report and Order*, *700 MHz Second Report and Order*, and any other orders that have been or may be released affecting the 700 MHz Band.

40. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of 700 MHz Band licenses. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in the 700 MHz Band subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

41. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 73 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction, including any subsequent auction (if necessary). Participants in Auctions 73 and 76 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

42. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auctions 73 and 76. For example, bidders should note that petitions have been filed for reconsideration of certain decisions made in the *700 MHz First Report and Order* and the *700 MHz Second Report and Order*. In addition, applicants should be aware that the Commission has sought comment on a range of proposals concerning consumer education about the DTV transition, including the possible imposition of reporting requirements on winning bidders for 700 MHz band licenses.<sup>71</sup> Of course, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auctions 73 and 76.<sup>72</sup> Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in Auctions 73 and 76.

43. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 73. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

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<sup>70</sup> 47 C.F.R. § 27.60; *see also* Section I.B.3 of this Public Notice.

<sup>71</sup> In the Matter of DTV Consumer Education Initiative, MB Docket No. 07-148, *Notice of Proposed Rulemaking*, FCC 07-148, ¶ 17 (rel. July 30, 2007)

<sup>72</sup> *Cellco Partnership d/b/a Verizon Wireless v. FCC*, Case Nos. 07-1359 & 07-1382, U.S. Court of Appeals for the District of Columbia Circuit.



44. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses being offered.

45. Applicants may use the licensing database for the Media Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/cdbs.html>. Potential bidders may query the database and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information, Search for Application Information and downloading query results are available online by selecting the CDBS Public Access options from this page. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. A search for assignment of license or transfer of control applications may be conducted using "ALTC" as the Group Type under the Group Search function. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at [cdbshelp@fcc.gov](mailto:cdbshelp@fcc.gov).

46. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

47. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the geographic area for which they plan to bid, and also to familiarize themselves with the environmental review obligations described below in Section I.B.7.

## **5. Use of Integrated Spectrum Auction System**

48. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 73 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with Auctions 73 and 76. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

## **6. Fraud Alert**

49. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 73 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

50. Information about deceptive telemarketing investment schemes is available from the Commission as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from: (i) the FCC by going to <http://wireless.fcc.gov/csinfo/#fraud> or by telephone at (888) 225-5322 (FCC’s Consumer Call Center); (ii) the FTC by going to <http://ftc.gov/bcp/menu-invest.htm> or by telephone at (202) 326-2222; and (iii) the SEC by going to <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud&section=Investor+Information&x=8&y=5> or by telephone at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060.

## **7. Environmental Review Requirements**

51. Licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.<sup>73</sup> The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission’s environmental rules for each such facility.<sup>74</sup> The Commission’s environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.<sup>75</sup> The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

### **C. Auction Specifics**

#### **1. Auction 73 Start Date**

52. Bidding in Auction 73 will begin on **Thursday, January 24, 2008**.

53. This change of the previously-announced start date for Auction 73 will provide interested parties with additional time after this announcement of competitive bidding procedures to develop business plans, assess market conditions, and evaluate the availability of equipment for new 700 MHz Band services.<sup>76</sup>

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<sup>73</sup> 47 C.F.R. Ch. 1, Subpart I.

<sup>74</sup> 47 C.F.R. §§ 1.1301-1.1319.

<sup>75</sup> 47 C.F.R. Part 1, Appendix C.

<sup>76</sup> See 47 U.S.C. § 309(j)(3)(E)(ii). In the *700 MHz Auction Public Notice*, the Bureau proposed to start Auction 73 on January 16, 2008.

54. Some commenters had sought a postponement of the previously-announced start date until January 25 or 28, 2008.<sup>77</sup> Pursuant to the Congressional mandate, the Commission must conduct the auction of licenses for recovered analog spectrum in the 700 MHz Band by commencing the bidding not later than January 28, 2008.<sup>78</sup> Starting the auction on the statutory deadline for commencing the auction, or one business day prior to the deadline would provide insufficient time to address unexpected matters that might arise just prior to the start of bidding.

55. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Moreover, unless otherwise announced, bidding on all licenses and packages will be conducted on each business day until bidding has stopped on all licenses and packages.

## **2. Auction Title**

56. The auction in which the 700 MHz Band licenses will initially be offered is designated as "Auction 73 – 700 MHz Band." In the event that any licenses, including alternative licenses, are offered in contingent subsequent bidding, that will be designated as Auction 76.

## **3. Bidding Methodology**

57. As discussed in more detail below, the bidding methodology for Auction 73 will be simultaneous multiple round ("SMR") bidding for the A, B, D, and E Block licenses and an auction design with hierarchical package bidding ("HPB") for the C Block licenses.<sup>79</sup> The Commission will conduct Auctions 73 and 76 over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

## **4. Pre-Auction Dates and Deadlines**

58. The following dates and deadlines apply:

Auction Seminar .....	November 19, 2007
Auction 73 and 76 Short-Form Application (FCC Form 175) Filing Window Opens .....	November 19, 2007; 12:00 noon ET
Auction 73 and 76 Short-Form Application (FCC Form 175) Filing Window Deadline .....	December 3, 2007; prior to 6:00 p.m. ET
Auction 73 Upfront Payments (via wire transfer).....	December 28, 2007; 6:00 p.m. ET
Mock Auction .....	January 18, 2008
Auction 73 Begins.....	January 24, 2008

59. If contingent subsequent bidding is necessary, we intend to announce the start date for Auction 76 and the deadline for additional upfront payments within five business days after the end of bidding in Auction 73. We expect that Auction 76 would begin within three weeks of that announcement.

## **5. Requirements for Participation in Auction 73 and 76**

60. Those wishing to participate in Auction 73 and 76 (should any subsequent auction become necessary), must:

<sup>77</sup> MetroPCS Comments at 5; US Cellular Reply Comments at 9. *See also*, "Joint Request for Mid-December Short-Form Filing Deadline," filed by Frontline, MetroPCS, RTG, and US Cellular, filed on October 2, 2007.

<sup>78</sup> *See* 47 U.S.C. § 309(j)(15)(v).

<sup>79</sup> Section IV.A.1. "Simultaneous Multiple Round Auction with Package Bidding on C Block Licenses," below.

- For Auction 73, submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, December 3, 2007, following the electronic filing procedures set forth in Attachment D to this Public Notice.
- For Auction 76, submit short-form applications (FCC Form 175) electronically prior to 6:00 p.m. ET, December 3, 2007, for each auction following the electronic filing procedures set forth in Attachments D and E to this Public Notice. Bidding in Auction 76 is open only to applicants that qualify to participate in Auction 73, and that comply with all of the requirements for participating in Auction 76, including submitting a separate short-form application.
- For Auction 73, submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, December 28, 2007, following the procedures and instructions set forth in Attachment F to this Public Notice.
- For Auction 76 (if necessary), submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the deadline to be announced following the end of bidding in Auction 73.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

#### **D. Other Issues Raised by Commenters**

61. Two commenters raised issues that are unrelated to those raised in the *700 MHz Auction Public Notice*. Eydt proposes that the Commission should require that all licenses offered in Auction 73 be made available to public safety personnel for priority use during critical emergencies.<sup>80</sup> Eydt also suggests that such a requirement be considered in the event of a contingent auction, if any.<sup>81</sup> Frontline urges the Commission to require applicants to disclose on their short-form applications whether winning the licenses they have selected would cause their spectrum holdings to exceed 70 MHz of spectrum in the markets of the selected licenses.<sup>82</sup> In the event that any applicants indicate that their spectrum holdings would exceed this amount, Frontline proposed that their short-form applications should be dismissed before the commencement of Auction 73.<sup>83</sup> Frontline also requests that the Commission investigate alleged violations of the Commission's *ex parte* rules by Verizon Wireless concerning policy on the open platform provisions for C Block licenses, and proposes excluding Verizon Wireless from Auction 73 as a possible sanction for violating the Commission's rules.<sup>84</sup>

62. These issues are outside the scope of this non-rulemaking proceeding, which is confined to establishing competitive bidding procedures for Auction 73. We note that some of these issues have been presented to the Commission in petitions for reconsideration of the *700 MHz Second Report and Order* and will be addressed in that proceeding.<sup>85</sup>

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<sup>80</sup> Eydt Comments at 1.

<sup>81</sup> *Id.*

<sup>82</sup> Frontline Comments at 14-16.

<sup>83</sup> *Id.*

<sup>84</sup> Frontline *Ex Parte* Letter, dated September 27, 2007, at 1.

<sup>85</sup> Petition for Partial Reconsideration and/or Clarification, filed on behalf of the Blooston Rural Carriers, received September 24, 2007; Petition for Reconsideration, filed on behalf of the *Ad Hoc* Public Interest Spectrum Coalition, received September 24, 2007; Petition for Reconsideration, filed on behalf of Frontline Wireless, LLC, received September 24, 2007; Petition for Reconsideration, filed on behalf of Pierce Transit, received September 24, 2007; (continued....)

## II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

63. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.<sup>86</sup> The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications (FCC Form 175) in which they certify under penalty of perjury as to their qualifications.<sup>87</sup> Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below.<sup>88</sup> In the second phase of the process, winning bidders file a more comprehensive long-form application.<sup>89</sup>

64. Entities seeking licenses available in Auction 73 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on December 3, 2007, following the procedures prescribed in Attachment D to this Public Notice. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing, as described above. Note that for Auctions 73 and 76, applicants filing a short-form application for Auction 73 will remain subject to the Commission's anti-collusion rules through the completion of Auction 76, if conducted. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.<sup>90</sup> Applicants should read the instructions set forth in Attachment D to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

65. Entities seeking licenses that may be offered in Auction 76, if Auction 76 is conducted, must file electronically via the FCC Auction System prior to 6:00 p.m. ET on December 3, 2007 both a short-form application for Auction 73, following the procedures prescribed in Attachment D to this Public Notice, and an abbreviated short-form application for Auction 76, following the procedures prescribed in Attachment E to this Public Notice. Applicants filing short-form applications for both Auctions 73 and 76 are subject to the Commission's anti-collusion rules beginning on the deadline for filing both applications, as described above.

66. To streamline the application process, other than license selection requirements, all relevant information for the application to participate in Auction 76 must be submitted as part of the application to participate in Auction 73. The Auction 76 abbreviated application will request – and will accept – only  
(Continued from previous page)

Petition for Reconsideration and Clarification, filed on behalf of AT&T Inc., received September 24, 2007; Petition for Reconsideration, filed on behalf of the Rural Telecommunications Group, Inc., received September 24, 2007; Petition for Reconsideration, filed on behalf of the Commonwealth of Virginia, received September 24, 2007; Petition for Partial Reconsideration and For Clarification, filed on behalf of Cyren Call Communications Corporation, received September 24, 2007; Petition for Partial Reconsideration, filed on behalf of NTCH, Inc., received September 21, 2007; Petition for Clarification and Reconsideration, filed on behalf of MetroPCS Communications, Inc., received September 20, 2007.

<sup>86</sup> 47 C.F.R. § 1.2105.

<sup>87</sup> *Id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

<sup>88</sup> Section III.D. "Upfront Payments – Due December 28, 2007," below.

<sup>89</sup> 47 C.F.R. § 1.2107.

<sup>90</sup> 47 C.F.R. § 1.2105(a)(2)(v).

information that the FCC Auction System requires in order to enable applicants to submit license selections for Auction 76. For example, applicants seeking to submit information regarding bidding agreements with respect to licenses offered in Auction 76 will not be able to access the bidding agreement screens that are usually part of the short-form application in the Auction 76 abbreviated application. Instead, such applicants must submit information regarding those agreements as part of their Auction 73 short-form application.

67. To comply with FCC Auction System requirements, however, applicants will be required to repeat some information submitted in their Auction 73 application, e.g. their FCC Registration Number (FRN), their name and address, certification of the form's contents, etc. As noted in the procedures for filing the abbreviated short-form application for Auction 76, applicants must provide the same information submitted in their application for Auction 73 as they provide in their Auction 76 application. Most importantly, **if an entity wishes to submit a short-form application for Auction 76, it must do so using the same FRN that it uses for its short-form application for Auction 73. In addition, the same person must certify both applications, as the certification applies to information submitted in both applications.**

68. An entity may not submit more than one short-form application for Auction 73. Similarly, an entity may not submit more than one short-form application for Auction 76. If a party submits multiple short-form applications for either Auction 73 or Auction 76, only one application for each will be accepted for filing.

69. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.<sup>91</sup> Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

#### **A. Preferences for Small Businesses and Others**

##### **1. Size Standards for Bidding Credits**

70. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 73 and Auction 76, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows:

- A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bid.<sup>92</sup>
- A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bid.<sup>93</sup>

71. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

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<sup>91</sup> 47 C.F.R. § 1.2105(b).

<sup>92</sup> See 47 C.F.R. § 1.2110(f)(2)(ii).

<sup>93</sup> See 47 C.F.R. § 1.2110(f)(2)(i).

72. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application for Auction 73 to establish that it satisfies the applicable eligibility requirement.<sup>94</sup> An applicant's disclosure of this information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required – and will not be able to – submit this information in their abbreviated Auction 76 application. Applicants claiming eligibility as a designated entity in Auction 73 and Auction 76 should review carefully the *CSEA/Part 1 Report and Order*, the *Designated Entity Second Report and Order*, and the *Order on Reconsideration of the Designated Entity Second Report and Order*. In that connection, the Commission adopted rules governing eligibility for designated entity benefits in the *Designated Entity Second Report and Order*.<sup>95</sup> The Commission's rules regarding applicants seeking eligibility for designated entity benefits require the disclosure of (1) all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum;<sup>96</sup> and (ii) the gross revenues, separately and in the aggregate, of entities with which the applicant has an attributable material relationship, as defined in Section 1.2110(b)(3)(iv)(B).<sup>97</sup>

73. The Commission has adopted a narrow exemption from the attribution rule for the officers and directors of a rural telephone cooperative pursuant to which the gross revenues of the affiliates of the cooperative's officers and directors are not attributed to the applicant.<sup>98</sup> An applicant (or controlling interest) seeking to claim this exemption must include in its short-form application a certification that it is validly organized under the most closely applicable organizing statute for a cooperative, and that such organization is reflected in its articles of incorporation, by-laws, and/or other relevant organic documents.<sup>99</sup> Applicants seeking to claim this exemption must meet all of the conditions specified in Section 1.2110(b)(3)(iii) of the Commission's rules.<sup>100</sup> Additional guidance on completing the FCC Form 175 to claim this exemption may be found in Attachment D to this Public Notice.

## 2. Tribal Lands Bidding Credit

74. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their FCC Form 175 short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their FCC Form 601 long-form applications. This process is described in Section VI.F. "Tribal Lands Bidding Credit," below.

<sup>94</sup> 47 C.F.R. §§ 1.2105, 1.2110(b)(1)(i). See Section II.E. "Bidding Credit Revenue Disclosures," below, and Attachment D.

<sup>95</sup> See, generally, Competitive Bidding Rules and Procedures, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 21 FCC Rcd 4753 (2006) ("*Designated Entity Second Report and Order*"), petitions for reconsideration pending; *Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703 (2006) ("*Order on Reconsideration of the Designated Entity Second Report and Order*"), petitions for reconsideration pending.

<sup>96</sup> 47 C.F.R. § 1.2112(b)(1)(iii).

<sup>97</sup> 47 C.F.R. § 1.2112(b)(1)(iv). Note that certain otherwise attributable material relationships may not be attributable pursuant to the provisions of 47 C.F.R. § 1.2110(b)(3)(iv)(C)(2).

<sup>98</sup> 47 C.F.R. § 1.2110(c)(2)(ii)(F).

<sup>99</sup> *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1949 ¶ 18.

<sup>100</sup> 47 C.F.R. § 1.2110(b)(3)(iii). See *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10186-94 ¶¶ 10-18; *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1945-46 ¶ 9.

### 3. Installment Payments

75. Installment payment plans will not be available in Auction 73 or in Auction 76.

#### B. License Selection

76. An applicant must select the initially offered licenses on which it wants to bid individually or as part of a pre-defined package in Auction 73 from the “Eligible Licenses” list on its short-form application for Auction 73. An applicant interested in bidding on licenses in the contingent subsequent auction must select those licenses from the “Eligible Licenses” list on its short-form application for Auction 76. Applicants will be able to bid on pre-defined packages of initially offered C Block licenses and alternative C2 Block licenses, if offered in subsequent bidding, pursuant to the package bidding procedures described below, only if they have selected all the individual licenses that comprise the relevant package on their respective short-form applications.

77. To assist applicants in identifying licenses of interest that will be available in Auctions 73 and 76, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the “Eligible Licenses” list. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses.

78. Applicants will not be able to change their license selections for either Auction 73 or Auction 76 after the short-form application filing deadline.<sup>101</sup> Applicants interested in participating in Auctions 73 and 76 must have selected license(s) available in the respective auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting FCC Form 175. The FCC Auction System will not accept bids from an applicant on individual licenses that the applicant has not selected on its FCC Form 175. In addition, the FCC Auction System will not accept bids from an applicant on a pre-defined hierarchical package unless the applicant selected on its FCC Form 175 all the individual licenses that comprise the package.

#### C. Disclosure of Bidding Arrangements

79. Applicants will be required to identify in their short-form application for Auction 73 all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned in Auctions 73 and 76, including any agreements relating to post-auction market structure.<sup>102</sup> The agreements identified in the short-form application for Auction 73 will become part of the applicant’s Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required – and will not be able to – disclose bidding agreements in their abbreviated Auction 76 application.

80. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application to participate in Auction 73, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.<sup>103</sup> If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it would not include the names of parties to the

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<sup>101</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>102</sup> 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

<sup>103</sup> 47 C.F.R. § 1.2105(a)(2)(ix).



discussions on its application and may not continue such discussions with any applicants after the deadline.<sup>104</sup>

81. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.<sup>105</sup> While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.<sup>106</sup> Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.<sup>107</sup>

#### **D. Ownership Disclosure Requirements**

82. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules.<sup>108</sup> Specifically, in completing the short-form application for Auction 73, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.<sup>109</sup> Each applicant is responsible for information submitted in its short-form application being complete and accurate. An applicant's disclosure of ownership information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required – and will not be able to – submit ownership disclosure information in their abbreviated Auction 76 application.

83. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an online FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 73 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

#### **E. Bidding Credit Revenue Disclosures**

84. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling

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<sup>104</sup> Section I.B.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

<sup>105</sup> 47 C.F.R. § 1.2105(c)(4)(i), (ii).

<sup>106</sup> Section I.B.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

<sup>107</sup> *Id.*

<sup>108</sup> Section 1.2105 requires the disclosure on the short-form application of the applicant's ownership information set forth in both Sections 1.2105 and 1.2112. 47 C.F.R. §§ 1.2105, 1.2112.

<sup>109</sup> *Id.*

interests, and the affiliates of its controlling interests.<sup>110</sup> Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their short-form applications for Auction 73 the gross revenues of the preceding three years for each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.<sup>111</sup> Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Applicants must also disclose the gross revenues of the entities with which they have attributable material relationships, as defined by the Commission's rules.<sup>112</sup> Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member. An applicant's disclosure of bidding credit revenue information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required – and will not be able to – submit bidding credit revenue information in their abbreviated Auction 76 application.

85. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.<sup>113</sup> The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;
- the entity plays an integral role in management decisions.<sup>114</sup>

86. Officers and directors of an applicant are also considered to have controlling interest in the applicant.<sup>115</sup> The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities; the affiliates of those principals or entities; the applicant and its affiliates; and, as discussed below, any parties having an attributable material relationship with the applicant will be counted in determining small business eligibility.

87. Last year, in the *Designated Entity Second Report and Order*, the Commission adopted material relationship rules.<sup>116</sup> The Commission now requires the consideration of certain leasing and resale (including wholesale) relationships – “material relationships” – in determining designated entity

<sup>110</sup> 47 C.F.R. § 1.2110(b); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27 ¶¶ 59-67.

<sup>111</sup> 47 C.F.R. § 1.2110(b).

<sup>112</sup> 47 C.F.R. § 1.2112(b)(iv); *see* 47 C.F.R. § 1.2110(b)(3)(iv)(B) (defining attributable material relationships).

<sup>113</sup> For further guidance on the issue of *de facto* control, *see* the Commission's affiliation rule at 47 C.F.R. § 1.2110(b)(5); *see also Intermountain Microwave*, 12 FCC 2d 559, 560 (1963), and *Application of Baker Creek Communications, L.P., for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998).

<sup>114</sup> 47 C.F.R. § 1.2110(c)(2)(i)(A)-(C).

<sup>115</sup> 47 C.F.R. § 1.2110(c)(2)(ii)(F).

<sup>116</sup> *See, generally, Designated Entity Second Report and Order*, 21 FCC Rcd 4753; *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd 6703; and 47 C.F.R. §§ 1.2110, 1.2111, and 1.2112; *see also id.* § 1.2114.